Filed 11/2/09 Adams v. Robert Mondavi Winery Woodbridge CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

CHRISTOPHER ADAMS, Plaintiff and Appellant, v. ROBERT MONDAVI WINERY WOODBRIDGE et al., Defendants and Respondents.	C055800 (Super. Ct. No. CV023309) ORDER MODIFYING OPINION AND DENYING REHEARING [NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on October 5, 2009, be modified as follows:

On page 18, before the paragraph beginning "Taking a different tack . . ." insert the following:

After oral argument, plaintiff called our attention to a recent case, *Lloyd v. County of Los Angeles* (2009) 172 Cal.App.4th 320 (*Lloyd*), in which the court held that Labor Code

section 98.7 does not require exhaustion of administrative remedies and instead simply provides employees with an additional, optional remedy. (*Id.* at p. 323, 331-332.) Plaintiff urges that we follow *Lloyd* and reach the same conclusion. We decline to do so.

In *Lloyd*, the court reviewed the language of Labor Code section 98.7 and, emphasizing the reference to "any other rights and remedies under any other law" in subdivision (f), observed that "it would appear Labor Code section 98.7 merely provides the employee with an additional remedy which the employee may choose to pursue." (*Lloyd, supra,* 172 Cal.App.4th at p. 331.) For reasons already explained, we do not believe this interpretation is correct.

The *Lloyd* court went on to state, "Further, case law has recognized that there is no requirement that a plaintiff proceed through the Labor Code administrative procedure in order to pursue a statutory cause of action. (*Daly v. Exxon Corp.* [(1997) 55 Cal.App.4th 39, 46]; *Murray v. Oceanside Unified School Dist.* [(2000) 79 Cal.App.4th 1338, 1359.]) We see no reason to differ with these decisions and to impose an administrative exhaustion requirement on plaintiffs seeking to sue for Labor Code violations." (*Lloyd, supra,* 172 Cal.App.4th at pp. 331-332.)

We find this conclusion problematic. *Lloyd* did not mention *Campbell, supra*, 35 Cal.4th 311 or any of the federal court cases upon which we rely. We find those decisions to be far more compelling than the brief analysis provided in the cases

cited by *Lloyd*. For example, in *Daly*, the court reversed a judgment of dismissal entered after the trial court sustained a demurrer without leave to amend plaintiff's fourth amended complaint. (*Daly v. Exxon Corp.*, *supra,* 55 Cal.App.4th at pp. 41-42.) The appellate court agreed that plaintiff could not state a cause of action for wrongful termination in violation of public policy, but concluded that the trial court had not properly considered plaintiff's claim for statutory damages under Labor Code section 6310, subdivision (b). (*Id.* at pp. 43-44.) Although its analysis did not include a discussion of whether exhaustion of administrative remedies was required (see *ibid.*), the court's conclusion included the following sentence, "There is no requirement that [plaintiff] exhaust her administrative remedies with the Labor Commissioner," and cited two cases from the 1980's, both of which antedate the Supreme Court's analysis in its 2005 *Campbell* decision. (*Id.* at p. 46.) The discussion in *Murray* is just as fleeting (*Murray v. Oceanside Unified School Dist.*, *supra,* 79 Cal.App.4th at p. 1359) and we do not find it convincing. We instead follow the clear principles enunciated in *Campbell* and conclude that exhaustion is required.

Lloyd also asserted that imposing an exhaustion requirement "flies in the face of the concerns underlying the Labor Code Private Attorneys General Act of 2004 (PAG Act) (Lab. Code, § 2698 et seq.)." (*Lloyd, supra,* 172 Cal.App.4th at p. 332.) The court noted that in enacting this scheme, the Legislature had declared that staffing levels for labor law enforcement were

unlikely to keep up with growth and that it was in the public interest to permit civil penalties to be assessed and collected by aggrieved employees acting as private attorneys general. (*Ibid.*) *Lloyd* concluded: "The PAG Act's approach, enlisting aggrieved employees to augment the Labor Commissioner's enforcement of state labor law, undermines the notion that Labor Code section 98.7 compels exhaustion of administrative remedies with the Labor Commissioner." (*Ibid.*)

We do not draw the same conclusion. Permitting actions by private attorneys general is a matter separate and apart from the question of whether any procedural steps must be taken before such an action can be filed. The Legislature indeed stated that the public's interest would be served by permitting action by private attorneys general but, as the *Lloyd* court noted, added that such a process must also ensure "that state labor law enforcement agencies' enforcement actions have primacy over any private enforcement efforts undertaken pursuant to this act." (Stats. 2003, ch. 906, § 1; see *Lloyd, supra*, 172 Cal.App.4th at p. 332.) Permitting actions by private individuals without exhausting administrative remedies would fly in the face of this concern.

For all of these reasons, we cannot agree with *Lloyd*.

There is no change in the judgment.

Appellant's petition for rehearing is denied.

SCOTLAND, P. J.

HULL, J.

CANTIL-SAKAUYE, J.